

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

MURRAY ENERGY CORPORATION, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 5:14-CV-0039
)	Judge Bailey
GINA McCARTHY, Administrator,)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, acting in her)	
official capacity,)	
)	
Defendants.)	
)	

UNITED STATES' NEW MOTION FOR SUMMARY JUDGMENT

Gina McCarthy, Administrator, United States Environmental Protection Agency, acting in her official capacity (hereinafter, "EPA") moves for entry of summary judgment on three alternative grounds that: (1) Section 321(a) of the Clean Air Act ("the Act"), 42 U.S.C § 7621(a), does not include a non-discretionary duty that is justiciable under the Act's citizen-suit provision, *id.* at § 7604(a); (2) Plaintiffs have failed to demonstrate Article III standing; and/or (3) because EPA has conducted "continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of [the Act] and applicable implementation plans," as described in Section 321(a).

This motion is supported by the memorandum of law and exhibits, including the Updated Declaration of James B. DeMocker and attachments thereto, submitted herewith. If this Court determines that subject matter jurisdiction exists, the United States submits that the documents attached to Mr. DeMocker's Declaration demonstrate that EPA has evaluated and is continuing to evaluate the potential loss or shifts of employment that may result from the administration and enforcement of the Act as described in Section 321(a). Alternatively, if the Court finds that EPA

has not performed the evaluations, the United States requests that judgment be entered against it and that the Court order EPA to perform the duty and nothing more. In either case, this matter should be resolved by summary judgment based on the record before the Court.

DATED: May 2, 2016

Respectfully Submitted,

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_____)	

CERTIFICATE OF SERVICE

I, Erin Carter Tison, hereby certify that on the 2nd day of May, 2016, the foregoing United States' New Motion for Summary Judgment was served using the CM/ECF system, which will cause a copy to be served upon counsel of record.

/s/ Erin Carter Tison
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